

ASSEMBLY BILL

No. 758

Introduced by Assembly Member Calderon

February 18, 2005

An act to amend Section 2782 of the Civil Code, relating to construction contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 758, as introduced, Calderon. Construction contracts: indemnity.

Existing law provides that, except as specified, agreements affecting any construction contract that purport to indemnify the promisee against liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage, or expense arising from the sole negligence or willful misconduct of the promisee or the promisee's agents, servants, or independent contractors who are directly responsible to the promisee, or for defects in design furnished by those persons, are against public policy and are void and unenforceable.

This bill would provide that, except as specified, all agreements affecting any residential construction contract entered into after January 1, 2006, that purport to indemnify or require a defense duty of the builder by a subcontractor against liability for claims of construction defects or other injury to property arising from the negligence of the builder or the builder's agents, servants, or independent contractors who are directly responsible to the builder, or for defects in design furnished by those persons, are void and unenforceable.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 2782 of the Civil Code is amended to read:

2782. (a) Except as provided in Sections 2782.1, 2782.2, 2782.5, and 2782.6, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract and ~~which~~ *that* purport to indemnify the promisee against liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the promisee or the promisee's agents, servants, or independent contractors who are directly responsible to ~~such~~ *the* promisee, or for defects in design furnished by ~~such~~ *those* persons, are against public policy and are void and unenforceable; provided, however, that this provision shall not affect the validity of any insurance contract, workers' compensation, or agreement issued by an admitted insurer as defined by the Insurance Code.

(b) Except as provided in Sections 2782.1, 2782.2, and 2782.5, provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any construction contract with a public agency ~~which~~ *that* purport to impose on the contractor, or relieve the public agency from, liability for the active negligence of the public agency ~~shall be~~ *are* void and unenforceable.

(c) *For all construction contracts entered into after January 1, 2006, for residential construction, as used in Title 7 (commencing with Section 895) of Part 2 of Division 2, all provisions, clauses, covenants, or agreements contained in, collateral to, or affecting any such construction contract that purport to indemnify or require a defense duty of the builder, as defined in Section 911, by a subcontractor against liability for claims of construction defects or other injury to property arising from the negligence of the builder or the builder's agents, servants, or independent contractors who are directly responsible to the builder, or for defects in design furnished by those persons, are void and unenforceable.*

O